

# Exhibit II

**From:** Gerry Cohen <ger.cohen@gmail.com>  
**To:** "Cox, Paul" <paul.cox@ncsbe.gov>  
**Subject:** [External] Re: SB 747 suggestions  
**Date:** Thu, 15 Jun 2023 03:41:14 +0000  
**Importance:** Normal

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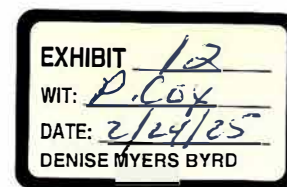
This is great!

Sent from my iPhone

On Jun 14, 2023, at 10:01 PM, Cox, Paul <paul.cox@ncsbe.gov> wrote:

FYI Gerry

Paul Cox  
General Counsel  
NC State Board of Elections



**From:** Cox, Paul  
**Sent:** Wednesday, June 14, 2023 4:15:03 PM  
**To:** Joshua Yost (President Pro Tem's Office) <Joshua.Yost@ncleg.gov>; Brent.Woodcox@ncleg.gov <Brent.Woodcox@ncleg.gov>  
**Cc:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>  
**Subject:** RE: SB 747 suggestions

Hey Josh, thanks again for chatting this afternoon. Below are the items we wanted to raise with the PCS for SB 747 and recommend revisions on:

1. **Same-day registration / provisionals (Sec. 6):** we're afraid that requiring the photo ID be a DMV-issued ID (the only one with address) and that it be updated to a person's current address, will cut out an awful lot of same-day registrants. This is because to have a DMV ID with an updated address, that person would have been prompted by the DMV to update their voter registration as well. So that reduces the likelihood that someone with an updated address on their DMV card will need to same-day register in the first place. This will also be very difficult for military personnel, students, and low-income people/renters who move frequently. A better approach would be to require the HAVA document, as we currently do for confirming same-day registrants' addresses at the polls, and then perhaps provide a method to retrieve a ballot that fails the first mail verification before canvass, and not involve a challenge procedure—just instruct the county boards to retrieve and disapprove the ballot.
2. **Same-day registration provisional cure (Sec. 6):** I suspect the deadline for the voter to return with two HAVA documents or photo ID and a HAVA document is supposed to be the day *before* canvass, not the day of canvass. Canvass occurs at 11 am by law and at that point, the board should have received

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everything it needs to determine whether to count provisional ballots. We would recommend revising to make the deadline the end of the day before canvass.

3. **Two-factor authentication (Sec. 22):** we discussed this, so I won't go too deeply, but having a technological authentication procedure for the ballot request is going to be very difficult for a lot of the absentee voting population to deal with. A lot of absentee voters are elderly, disabled, living in assisted living facilities, etc. Recall that we have authentication that occurs on the front end: the need to provide DOB plus SSN or DL—these are PII details that are not readily available to someone who might try to impersonate a voter.
4. **Absentee cure deadline (Sec. 26):** It looks like the statutory reference for the cure deadline in Sec. 26 needs to be updated. It refers to GS 163-231(b), but it should refer to GS 163-230.1(e) for the deadline.
5. **Election Day absentee meeting (Sec. 26):** there's no reason to require the county board, in the amended GS 163-234(2), to extend its absentee meeting past 7:30 on Election Day to allow for absentee ballot challenges to be received. The board cannot hear those challenges until the canvass, and the board need not be in session to receive the challenge. The office, which will necessarily be open at that time on Election Day already, can receive those challenges. And keeping the meeting going at the close of polls diverts board members and staff from critical tasks related to closing the polls and ensuring supplies and results are correctly returned. So we recommend removing this provision.
6. **Removing uniformity from list maintenance (Sec. 30):** we're not sure if the bill is specifically intending to strike the requirement that voter list maintenance practices be uniform across the state, but if that is intended, we could run into problems with federal law, namely the NVRA, which requires the designated state official, the Executive Director of the State Board, to be responsible for statewide compliance with federal law, which includes a "general program" to remove ineligible voters. You could also run into *Bush v. Gore* equal protection issues if voters are being removed (or not removed) differently in one county versus another. We recommend keeping the requirement that the State Board adopt a "uniform program" for list maintenance, and for the county boards to perform list maintenance "in accordance with this section and with the program adopted by the State Board."
7. **Noncitizen list maintenance records (Sec. 30):** We recommend revising the language on page 21, lines 29-30 to read ". . . except as provided for in State or federal law ~~prohibited by State and federal statute.~~" This ensures that exceptions to public records, for example for criminal investigative records, are included; they are not technically *prohibitions* on disclosure. It would also permit similar federal law protections that are developed through case law and are not statutory in nature. *E.g., Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 267 (4th Cir. 2021).
8. **Effective date for list maintenance revisions (Sec. 30):** We recommend revising this to be July 1, 2024, since April 1, 2024 could be in the middle of voting if a second primary is triggered, making it very difficult to make changes, especially in SEIMS.
9. **Revise photo ID message requirement (Sec. 31):** We recommend revising this provision to be consistent with GS 163-166.16(d) and SL 2018-144, sec. 1.5(a)(1), which requires the State Board to communicate, "All registered voters will be allowed to vote with or without a photo ID card. When voting in person, you will be asked to present a valid photo identification card. If you do not have a valid photo ID card, you may obtain one from your county board of elections prior to the election, through the end of the early voting period. If you do not have a valid photo ID card on election day, you may still vote and have your vote counted by signing an affidavit of reasonable impediment as to why you have not presented a valid photo ID."

Let me know if y'all want to discuss any of these points. I also want to reiterate the issue with the appointment (and presumably removal of) county directors of elections in the PCS for SB 749. Involving  
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county boards of commissioners has the potential to inject political influence over what should be a nonpartisan professional trusted to administer elections, and of course, county commissioners are on the ballot. So I would recommend carefully considering before going down that path.

Best,

**Paul Cox**  
General Counsel  
NORTH CAROLINA STATE BOARD OF ELECTIONS  
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**From:** Cox, Paul  
**Sent:** Monday, June 12, 2023 11:23 PM  
**To:** Joshua Yost (President Pro Tem's Office) <Joshua.Yost@ncleg.gov>; Brent.Woodcox@ncleg.gov  
**Cc:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>  
**Subject:** RE: SB 747 suggestions

My apologies -- Please use this version. I realized I forgot to include a few necessary words in the proposed revisions to the section 1: "*the day before election day.*"

**From:** Cox, Paul  
**Sent:** Monday, June 12, 2023 11:19 PM  
**To:** Joshua Yost (President Pro Tem's Office) <Joshua.Yost@ncleg.gov>; 'Brent.Woodcox@ncleg.gov' <Brent.Woodcox@ncleg.gov>  
**Cc:** Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>  
**Subject:** SB 747 suggestions

Hi Brent and Josh,

It was nice connecting with you on Friday to talk through some suggestions on the administrability of SB 747.

As we discussed, I put together some suggested language revisions on some of the issues we discussed. I highlighted in yellow proposed changes on top of changes in the bill, to avoid confusion with the underlining. Please feel free to reach out with questions or if you want to discuss language. My direct is 919-814-0717.

Best,

**Paul Cox**  
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